

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7989 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RATANSINGH AMARNATH SETHI

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR.L.R.PUJARI, LD.ASST.GOVERNMENT PLEADER  
for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/03/99

ORAL JUDGEMENT

1. The petitioner through this writ petition under Article 226 of the Constitution of India has challenged the detention order, dated 1.8.98 passed by the Police Commissioner, Ahmedabad City under section 3(2) of the Prevention of Antisocial Activities Act(for short "PASA"), and has prayed for quashing and setting aside

the said order, and has also prayed that he may be immediately released from illegal detention.

2. From the grounds of detention it seems that on account of registration of one case under Bombay Prohibition Act, and the statements given by three confidential witnesses that the detaining authority was subjectively satisfied that the petitioner is a "bootlegger" within the meaning of Section 2(b) of PASA and that his activities were prejudicial for maintenance of public order. The impugned order of detention was accordingly passed which has been challenged on the only ground that the activities of the petitioner can not be said to have disturbed the public order.

3. The subjective satisfaction of the detaining authority that the petitioner is a "bootlegger" was not challenged in the course of arguments nor it could be challenged by the Learned advocate for the petitioner inasmuch there was sufficient material before the detaining authority in the nature registration of one case under Bombay Prohibition Act, and the statements of three confidential witnesses that the petitioner is engaged in sale of country-made liquor.

4. A bootlegger, however, on account of his engagement in bootlegging activities can not be preventively detained unless his activities are found prejudicial for maintenance of public order. For this, the detaining authority seems to have relied upon two materials, namely, one offence registered against the petitioner under Bombay Prohibition Act, and the other in the nature of statements of three confidential witnesses. Regarding registration of offence, the Learned Asst. Government Pleader contended that it was a case where 1150 liters of country-made liquor was recovered on a truck and Maruti Fronty car and, in view of this recovery, the activities of the petitioner were certainly prejudicial for maintenance of public order. This contention can not be accepted, because the recovery of country-made liquor in huge quantity itself is not a ground for believing that the activities of the petitioner at that time were prejudicial for maintenance of public order. It is not disclosed that when the huge quantity of country-made liquor was recovered from the petitioner, and the truck and Maruti Fronty were seized he created obstruction to the process of search seizure and recovery, nor is there any disclosure that the petitioner created such a situation which could be termed prejudicial for maintenance of public order even within the extended meaning of "disturbance to public order"

within the meaning of explanation to Subsection (4) of Section (3) of PASA. Such registered offence could not be pressed in service for reaching subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. Then remains the statements of three confidential witnesses.

5. The first witness stated about the incident, dated 25.6.98 at 8.00 p.m. He was present at his house when the petitioner and his three companions went there and asked the witness to store the stock of liquor for sometime in his house. The witness refused to accede to the said request of the petitioner, whereby the petitioner and his three companions became angry and caught hold of the collar of the witness, he was dragged on public road and was beaten and threatened. The witness shouted for help, whereupon people gathered. The petitioner took out a knife and rushed towards people who collected at the spot. People ran for safety, and atmosphere of fear was created, and the traffic on the road was disturbed. This incident can be bifurcated into two parts. First part of the incident relates between the petitioner and the witness. Beating by the petitioner to the witness did not give rise to a situation which was prejudicial for maintenance of public order. Second part of the incident is about the collection of other people at the spot and the petitioner running towards them showing knife towards them. This incident also can not be said to have created situation prejudicial for maintenance of public order because no person from the crowd was injured at all by the petitioner or by his companions.

6. The second witness has stated about the incident, dated 22nd June, 1998 at 6.00 a.m. The petitioner was found moving with liquor near a temple along with his three companions. The witness objected and asked the petitioner not to indulge in such activities near the temple, whereupon the petitioner and his three companions became annoyed, they beat the witness and threatened him, witness shouted for help whereupon the petitioner and his three companions took out weapons and ran towards the crowd. Atmosphere of fear was created. The Learned Assistant Government Pleader has urged that because this activity was near a temple, a public and sacred place, the activity of the petitioner was certainly prejudicial for maintenance of public order. It seems difficult to accept this contention of the Learned Assistant Government Pleader. From the statement of witnesses, it appears that the activities of the petitioner were not

carried in the premises of the temple or in the temple itself. On the other hand, the allegation was that the petitioner along with his companions was moving with liquor near the temple. The temple may be a public place, but it is to be specified as to what extent a place can be said to be adjacent or near a temple. However, since wine was not being stored or kept inside the temple premises it can hardly be said that there could be any reason for the devotees to object to such activities of the petitioner. The incident took place in the early hours, i.e. 6.00 a.m. and the witness has not said that there was any devotee inside the temple. On similar facts, when such activity was being performed near a mosque, this court (presided over by me) in Special Civil Application No.7586/98 decided on 24.12.1998 found that such activities can not be said to be prejudicial for maintenance of public order. The temple and mosque can not be distinguished on the ground that the activity was near temple. This incident was also not such which was likely to create situation prejudicial for maintenance of public order.

7. The third witness narrated the incident dated 30th June, 1998 at 2.30 p.m. The petitioner went to the business place of the witness and demanded his vehicle for bringing liquor from Nadiad. The witness refused to give his vehicle, hence, the petitioner and his three companions became angry and dragged the witness and beat him. Nearby people collected. The petitioner and his companions ran towards those persons showing weapons on account of which atmosphere of fear was created. Such incidents have been examined in number of cases by me, and such incidents have been held not to have created situation prejudicial for maintenance of public order. As such the same view is to be taken regarding this incident also.

8. Thus, after considering the entire material on record I am of the view that there was no sufficient material before the detaining authority to reach subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. The detention order is illegal and invalid. It has therefore to be quashed.

9. The writ petition therefore succeeds and is allowed. The impugned order, dated 1.8.98 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other case.

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